THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.22872 of 1999

Dated:16.3.2007

Between
B.Appalanarasaiah
.....Petitioner

and

1. The Senior Divisional Manager
LIC of India, Visakhapatnam and
others. ...
Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.22872 of 1999

ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the respondents in denying an opportunity to defend his case by refusing the services of a co-employee and imposing a punishment of reduction in the time scale under the impugned proceedings dated 10.5.1999, 21.10.1995 and 16.1.1995 as illegal and arbitrary.

It is the case of the petitioner that while he was working as Sub-staff (Peon) in O & M Department of Anakapalle Branch in 1992, the authorities claimed that the franking machine rebate collected from the Post Office were not remitted immediately in the office and there was a delay of 5 to 12 days and therefore, the

same amounts to temporary misappropriation. After conducting a detailed enquiry, punishment of reduction in the basic pay by one stage in the time scale, was imposed by the disciplinary authority *vide* order dated 16.1.1995. Aggrieved by the same, he filed an appeal before the appellate authority and the appellate authority confirmed the same. Then he filed a revision in the form of a Memorial and the same was also dismissed on 10.5.1999. Aggrieved thereby, the present writ petition is filed.

Learned counsel for the petitioner strenuously contended that the order passed by the disciplinary authority as confirmed by the appellate authority and Memorial authority is erroneous, arbitrary and illegal and liable to be set aside, firstly on the ground that the petitioner was denied a reasonable opportunity to defend himself through a co-employee; secondly, absolutely there was no misappropriation committed by the petitioner

whether it is temporary or otherwise. The Enquiry Officer has not properly conducted the enquiry and the disciplinary authority simply accepted the findings of the Enquiry Officer and passed a cryptic order, likewise the appellate authority as well as the revisional authority. Therefore, the same is liable to be set aside.

Whereas the learned counsel for the respondents contended that the petitioner was not denied any opportunity to defend himself through a co-employee. The petitioner wanted that he was defended by a particular named employee, which was denied and he was asked to engage any other employee, who is stationed at the place where the enquiry was being conducted. The petitioner cannot choose his own person as a co-employee. Insofar as the misappropriation is concerned, it is a matter of record that the petitioner having collected the amount from the Post Office on a particular

date deposited the same with a delay of 3 to 12 days on 8 occasions. Therefore, it cannot be said that the petitioner has not committed misappropriation temporarily. Whether the amount involved is Rs.100/- or Rs.200/-, it makes no difference. The misappropriation is a misappropriation. With regard to temporary misappropriation, the authorities after having conducted a fair enquiry has took a lenient view of the matter, imposed a very very innocuous penalty of reduction in the basic pay by one stage in the time scale, which cannot be said either arbitrary or illegal and no interference can be made by this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material available on record.

Insofar as the first aspect i.e., petitioner was not given a reasonable opportunity to

defend himself by a co-employee, is concerned, though the petitioner made a request to permit one Mr.P.Suresh, who is a LIC employee, working in the Divisional Office, to defend him, the authorities have denied permission to engage the said person and asked the petitioner to engage any other co-worker working at a place where the enquiry is being conducted. In this regard, learned counsel for the respondents relied upon a circular issued by the LIC Central Office, Bombay dated 14.07.1979 and the guidelines issued thereafter on 23rd June, 1980 wherein it is stated that the assisting employee should be from the place where the enquiry in respect of the charge sheet issued to the delinquent is being held. Mr.Suresh whom the petitioner has named seems to be not a workman working at the place where the enquiry was being held. Therefore, they have rejected the case of the petitioner for taking assistance of Mr.Suresh

and he was advised to engage any other workman, who is working at the place of enquiry. However, the petitioner participated in the enquiry under protest. Thereafter, the enquiry was concluded. I am of the opinion that in a given case, the delinquent employee may not have any assistance of any other co-employees who are equally ignorant in the matter of domestic enquiry. It is not the case of the respondents that there are so many employees available, who are capable of assisting the petitioner, at the place of enquiry and therefore, Mr.Suresh could not be permitted to defend the petitioner. Such a practice adopted by the respondents is deprecable. It is always desirable to permit an employee of his choice, unless and until the Management thinks that there are other employees, who are capable of assisting the delinquent in the place where the enquiry is being conducted.

However, learned counsel for the

respondents stated that permitting the delinquent employee to defend himself through a co-employee is not a matter of right, it is at the mercy of the management. It is not in dispute that the petitioner is a Class-IV employee and he pleaded that he does not know how to participate in the enquiry therefore, he requested the assistance of Mr.P.Suresh and that was denied. Insofar as the temporary misappropriation is concerned, as could be seen from the allegations that on 8 occasions the petitioner seems to have deposited the amounts with a delay of 3 to 12 days and the maximum amount involved is Rs.150/- on each occasion and this fact came to light when the audit was being conducted. Neither the person who received the amount made any entry nor any other officer had taken any objection, therefore, it cannot be said that there was any intention on the part of the petitioner to commit temporary

misappropriation. There was no finding that there was such an intention on the part of the petitioner herein was established, except saying that the misappropriation was found by the audit department while auditing.

Under those circumstances, I am of the opinion that the punishment imposed is unwarranted and shockingly disproportionate to that of the misconduct alleged against the petitioner. The petitioner could not have been denied reduction of one incremental stage for the entire service. Since 8 years period has been elapsed, it may not be proper to send the matter back to the respondents for their consideration and passing appropriate orders as to the punishment. It is always desirable to give a quietus here itself to such a frivolous litigation.

Hence, I deem it appropriate to hold that reduction of time scale by one incremental stage imposing under the impugned order shall be treated to have been revoked with effect

from 1st April, 2007 and the punishment already suffered by the petitioner be treated as sufficient.

Writ petition is disposed of accordingly. No costs.

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16-03-2007

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